THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte STEPHEN M. NEUMANN

Appeal No. 94-0539
Application 07/890,456[1]

HEARD: April 8, 1997

Before KIMLIN, WEIFFENBACH and WARREN,[2] Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-12, all the claims in the present application. Claim 1 is illustrative:

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[1] Application for patent filed May 29, 1992.

[2] Administrative Patent Judge (APJ) Thierstein participated in the oral hearing on April 8, 1997, but has since resigned. APJ Warren has been substituted on this merits panel. Compare In re Bose, 772 F.2d 866, 227 USPQ 1 (Fed. Cir. 1985).

1. In a dye donor element for laser-induced thermal dye transfer comprising a support having thereon a dye layer comprising a sublimable image dye in a binder, said image dye being capable of transferring to a dye-receiving element, and an infrared absorbing dye associated with said dye layer and which absorbs the laser radiation, the improvement wherein said binder comprises a nonpolymeric, organic material with a glassy state having a glass transition temperature of greater than 25EC., capable of forming an amorphous glass with said image dye.

The examiner relies upon the following references as evidence of obviousness:

Molaire	4,626,361	Dec. 2, 1986
Chapman et al. (Chapman)	5,036,040	July 30, 1991
Kawakami et al. (Kawakami)	5,114,904	May 19, 1992
		(filed Dec. 20, 1990)

Appellant's claimed invention is directed to a dye donor element that is used in laser-induced thermal dye transfer processes. According to appellant, the invention is an improve-ment over the use of a conventional, polymeric binder for the donor element. In particular, appellant employs a non-polymeric, organic material with a glassy state as the binder. According to appellant, the comparative example at page 15 of the present specification shows improved transferred dye density when the claimed binder is used instead of a cellulose acetate propionate binder, which is a typical polymeric binder of the prior art.

Appealed claims 1-12 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chapman in view of Molaire and Kawakami.

Upon thorough review of the opposing arguments presented on appeal, we concur with appellant that the examiner has not established a prima facie case of obviousness for the claimed invention. Accordingly, we will not sustain the examiner's rejection.

Chapman, the primary reference, discloses the conventional use of a polymeric binder for a dye donor element of a laser-induced thermal dye transfer process. While Molaire discloses appellant's nonpolymeric, organic material as a binder in a laser-recording element, we agree with appellant that there is no teaching or suggestion in the applied references that the binder of Molaire can be effectively employed as a binder for the donor element of a thermal dye transfer process.

The examiner's reliance on Kawakami for providing the motivation for utilizing the binder of Molaire in the donor element of Chapman is misplaced. Like Chapman, Kawakami uses a polymeric binder in the donor element of a thermal transfer

process. The examiner reasons that since Kawakami teaches that the glass transition temperature for dye layer compositions should be in the range of 10E to 70EC, and Molaire teaches dye/binder mixtures having glass transition temperatures within the range of 10-70EC, "one skilled in the art would be directed to substitute the binder disclosed by Molaire for that used in the examples of Chapman" (page 10 of Answer). As pointed out by appellant, the flaw in the examiner's reasoning is that Kawakami teaches that the binder itself should have a glass transition temperature in the range of 10-70EC, whereas Molaire teaches that the binder itself has a glass transition temperature ranging from 101E to 152EC.

In our view, the most that can be concluded from the collective teachings of the applied references is that it might have been obvious for one of ordinary skill in the art to try a binder that is known to be useful for optical recording mediums as a binder in the donor element of a thermal dye transfer process. Of course, it is by now well settled that such is not the proper standard for determining obviousness under 35 U.S.C. § 103.

In conclusion, based on the foregoing, we are constrained to reverse the examiner's rejection.

REVERSED

EDWARD C. KIMLIN Administrative Patent Judge	)	
CAMERON WEIFFENBACH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
CHARLES F. WARREN Administrative Patent Judge	)	

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